

FILED

JAN 28 2013

Clerk, U.S. District Court
District Of Montana
Missoula

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

JAMES MICHAEL WEBB, JR.,)	CV 12-75-H-DLC
)	
Plaintiff,)	
)	
vs.)	ORDER
)	
KENNY NEUBAUER-UNIT)	
MANAGER; KEN COZBY-)	
DISCIPLINARY HEARINGS)	
OFFICER; MYRON BEESON-)	
ASSOCIATE WARDEN; and LEROY)	
KIRKEGARD-WARDEN,)	
)	
Defendants.)	
)	

United States Magistrate Judge Keith Strong entered Findings and Recommendations in this matter on November 15, 2012, recommending that the Complaint be dismissed without prejudice for failure to state a claim upon which relief may be granted. Plaintiff James Michael Webb, Jr., filed objections and is entitled to de novo review of the specified findings and recommendations to which

he objects. 28 U.S.C. § 636(b)(1). All other findings and recommendations are reviewed for clear error.

In his objections, Webb argues that his right to due process was violated because he did not have an opportunity to question his accusers at the time of the hearing and the only evidence against him was hearsay. He does not object to Judge Strong's finding that he has failed to allege a protected liberty interest, and there is no clear error in this finding.

To state a claim for a due process violation, a plaintiff must allege both a protected liberty interest and that he was deprived of that interest without due process. If there is no liberty interest at stake, the Constitution does not require any process.

Accordingly, IT IS ORDERED that Judge Strong's Findings and Recommendations (doc. 12) are ADOPTED in full.

IT IS FURTHER ORDERED that the Complaint (doc. 2) is DISMISSED.

The Clerk of Court is directed to close this matter and enter judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure.

The Clerk of Court is directed to have the docket reflect that the Court certifies pursuant to Fed.R.App.P. 24(a)(3)(A) that any appeal of this decision would not be taken in good faith. The record makes plain the instant

Complaint is frivolous as it lacks arguable substance in law or fact.

The Clerk of Court is directed to have the docket reflect that this dismissal counts as a strike pursuant to 28 U.S.C. § 1915(g). Webb failed to state a claim upon which relief may be granted and his claims are frivolous.

Dated this 28th day of January 2013.



Dana L. Christensen, District Judge
United States District Court